

Revised September 23, 2005

**Summary of the Meeting of the CON Task Force  
September 8, 2005**

**Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215**

**Task Force Members Present**

Commissioner Robert E. Nicolay, CPA, Chairman  
Commissioner Larry Ginsburg  
Commissioner Robert E. Moffit, Ph.D.  
Alan Bedrick, M.D.  
Albert L. Blumberg, M.D., F.A.C.R.  
Lynn Bonde  
Annice Cody  
Hal Cohen, Ph.D.  
Natalie Holland  
Carlessia A. Hussein, DrPH  
Michelle Mahan  
Henry Meilman, M.D.  
Lawrence Pinkner, M.D.  
Frank Pommert, Jr.  
Barry F. Rosen, Esquire  
Joel Suldán, Esquire  
Christine M. Stefanides, RN, CHE  
Jack Tranter, Esquire  
Elizabeth Weglein

**Task Force Members Absent**

Patricia M.C. Brown, Esquire  
William L. Chester, M.D.  
Adam Kane, Esquire  
Anil K. Narang, D.O.  
Douglas H. Wilson, Ph.D.

**Members of the Public Present**

Clarence Brewton, MedStar Health  
Richard Coughlan  
Jack Eller, Ober, Kaler

Sean Flanagan, St. Joseph Medical Center  
Chris Hall, Adventist HealthCare  
Katherine Hax, Kaiser Permanente  
Anne Langley, Johns Hopkins Health System  
Denise Matricciani, MHA: Association of Maryland Hospitals & Health Systems  
Chantel Ornstein, Alexander & Cleaver  
Vanessa Purnell, MedStar Health  
Laura Resh, Carroll Hospital Center  
Michelle Rice, MNCHCA and Potomac Home Health Care  
Linda Stahr, Maryland Legislative Information Services

### **1. Call to Order**

Chairman Robert E. Nicolay called the meeting to order at 1:12 p.m. and welcomed Task Force members and the public.

### **2. Approval of the Previous Minutes (August 25, 2005)**

Chairman Nicolay noted that the Task Force members had received copies of the minutes of the August 25th meeting and asked for any comments, changes, or corrections. Albert L. Blumberg, M.D., F.A.C.R., requested a revision to reflect that he had abstained from voting on Mr. Kane's motion regarding shell space for nursing homes, and made a motion to approve the minutes, as revised, which was seconded by Jack Tranter, Esquire, and approved by the members present.

### **3. Review and Discussion of CON Program Issues**

- **Recap of August 25, 2005 Meeting**

Chairman Nicolay presented a recap of the August 25th meeting.

- **Review of Draft CON Task Force Report (9/8/05)**

#### **Guiding Principles**

Chairman Nicolay announced that the Task Force would consider the Draft CON Task Force Report. The first issue discussed was the Task Force Recommendation regarding the Principles to Guide the CON Program. Following discussion, Commissioner Robert E. Moffit, Ph.D. made a motion to strike the word "unrestricted" in the second principle of the draft Guiding Principles, which was seconded by Hal Cohen, Ph.D. Additional discussion ensued, resulting in Commissioner Moffit's restated motion that the second guiding principle state that "Certificate of Need should be applied only in situations where competition through normal market forces is likely to result in significantly higher or unnecessary costs to the system, decreased access to care by vulnerable populations or less populous regions of the state, or a diminution of the quality or safety of patient care." Task Force members voting in favor of the motion were: Bedrick; Blumberg; Cody; Cohen; Holland; Mahan; Moffit; Pinkner; Pommert; Rosen; Stefanides; Suldán; Tranter; and Weglein. Task Force members Ginsburg, Hussein, and Mahan abstained from voting. None of the Task Force members voted in opposition to the motion. Following further discussion, Chairman Nicolay emphasized that all comments would be

addressed and that the Commission's guiding principles would promote and improve access by "addressing the needs of the underserved population as well as the racial disparity, which presently exists."

- **State Health Plan**

Chairman Nicolay announced the next agenda item would be consideration of the Task Force recommendations on slides 4, 5, and 6 of the presentation. Frank Pommert proposed that the Task Force add a fourth bullet on page four under State Health Plan that, "Review of each chapter shall be consistent with the guiding principles of the CON program." Following discussion, it was unanimously agreed that Mr. Pommert's suggestion would be adopted. Additional discussion ensued regarding whether the Long Term Care chapter would be reviewed in a similar manner as the acute care chapter, and whether operating room and procedure room should be defined in the Commission's State Health Plan chapter regarding ambulatory surgical facilities. In response to Task Force members' questions regarding whether the Final Report of the Task Force would describe its deliberations prior to recommendations that would be made to the Commission, Commissioner Moffit observed that minutes of earlier Task Force meetings included that information. Chairman Nicolay pointed out that concerns regarding specific Task Force recommendations would be discussed at the next meeting.

- **Review of Draft CON Task Force Report (9/8/05)**
- **CON Review Process**

Task Force member Christine Stefanides said that there were inconsistencies in the Task Force recommendations for eliminating CON review for home health and burn services, while retaining CON for other services. Chairman Nicolay reiterated that deliberations regarding those decisions were reflected in the minutes of earlier meetings. Mr. Pommert observed that he might have changed earlier votes if the guiding principles had been more fully considered prior to deliberations regarding specific services. In response to Mr. Tranter's question regarding the status of the Task Force recommendation on burn care services, Chairman Nicolay replied that the Task Force had not yet received recommendations from Task Force member Patricia M.C. Brown, Esquire. Task Force member Joel Suldman suggested that the review standards regarding expansion of hospitals' operating room capacity and distinctions between inpatient and outpatient capacity created unnecessary complexity. Following discussion among the members of the Task Force and staff, it was agreed that, if a Technical Advisory Committee is created to deal with ambulatory surgery, it should consider this issue.

- **Streamlined ("Fast Track") CON Review Process**

In reply to a question from Ms. Bonde regarding how projects eligible for "Fast Track" would be identified, Ms. Barclay replied that the types of projects would be set forth and specifically addressed in the State Health Plan. Task Force members Cohen, Blumberg, and Tranter expressed concerns about the potential effects upon hospitals, staff resources of the MHCC, as well as the HSCRC, caused by any new regulations that would include a "deemed approved" clause. Mr. Tranter made a motion that the Task Force adopt the language proposed for a Streamlined ("Fast Track") CON Review Process that for a renovation or new construction project with no new services/beds, the Staff Report must be completed within 60 days and the Commission issue its decision in 90 days or project is deemed approved. The motion was seconded by Mr. Pommert. Dr. Cohen proposed additional

language, which was accepted by Mr. Tranter. Following discussion, Mr. Tranter restated his motion that the Task Force recommendation would be:

- Streamlined (“Fast Track”) CON Review Process for Renovation Projects/New Construction Projects with No New Services/Beds
- Staff Report in 60 Days/Commission Decision in 90 Days or Project Deemed Approved, unless a hospital applicant applies for a partial rate review.

Mr. Pommert seconded the amended motion. Mr. Tranter specified that the motion applied only to hospital projects and not to long term care facilities. The following Task Force members voted in favor of the motion: Bedrick; Blumberg; Bonde; Holland; Mahan; Moffit; Pinkner; Pommert; Stefanides; Suldán; Tranter; and Weglein. Opposing the motion were Task Force members Cody, Cohen, Ginsburg, and Hussein. Dr. Meilman and Mr. Rosen abstained.

Mr. Suldán made a motion that requests for determination of non-coverage from CON, under the capital review threshold standard, would be deemed approved unless adverse action is taken by the Commission or the Commission staff within sixty (60) days. Dr. Cohen seconded Mr. Suldán’s motion. The following Task Force members voted in favor of the motion: Bedrick; Cody; Cohen; Holland; Mahan; Meilman, Moffit, Pinkner, Pommert, Rosen, Stefanides, Suldán, Tranter, and Weglein; opposing the motion were Task Force members Blumberg, Ginsburg, and Hussein. Ms. Bonde abstained.

○ **CON Application Form and Filing (Electronic Filings/Website Access)**

Mr. Suldán made a motion, which was seconded by Ms. Bonde, and unanimously approved by the Task Force members present, that requests for Determinations of Non-Coverage from CON become an online process.

○ **Require Site Visits and Local Hearings on All Major CON Projects**

In response to questions from Task Force members, Ms. Barclay clarified that the proposal was intended to make site visits a more formal part of the CON review process, as suggested in comments received by the Task Force. Following discussion, Dr. Blumberg proposed that the Task Force partition its recommendation and vote separately.

▪ **Require Decision-Makers to Visit Location of Proposed Projects**

Dr. Blumberg made a motion, which was seconded by Dr. Meilman, and unanimously approved, not to require that a decision maker visit the site of a proposed project.

▪ **Require Commission to conduct Local Hearings on All Contested Projects**

Task Force members voting not to require the Commission to conduct local hearings on all contested projects were Cody, Cohen, Holland, Mahan, Meilman, Moffit, Pinkner, Pommert, Rosen, Stefanides, Suldán, Tranter, and Weglein; voting in favor were: Bedrick, Blumberg, Bonde, and Hussein. There were no abstentions.

- **Eliminate Scheduled CON Reviews**

Dr. Cohen proposed that the Task Force recommend that scheduled CON Reviews be retained, which was seconded by Commissioner Ginsburg. Voting in favor of the motion were Task Force members Bedrick, Blumberg, Bonde, Cody, Cohen, Holland, Hussein, Mahan, Moffit, Pinkner, Pommert, Stefanides, Suldán, and Tranter; no Task Force member opposed the motion. Task Force members Meilman, Rosen, and Weglein abstained.

- **State Health Plan**

- Emergency Department/Outpatient Services
- Freestanding Birthing Centers

Dr. Cohen recommended adding a new State Health Plan chapter for Emergency Department services. Following discussion, Dr. Blumberg made a motion that Emergency Department/Outpatient Services and Birthing Center services not be added to the State Health Plan, which was seconded by Mr. Pommert. Following discussion, Dr. Pinkner proposed that the Chairman partition the question.

Dr. Blumberg restated his motion that a new Emergency Department/Outpatient Services chapter not be added to the State Health Plan, which was approved by the following Task Force members: Blumberg; Cody; Holland; Meilman; Moffit; Pinkner; Pommert; Rosen; Stefanides; and Suldán. Task Force members voting in opposition to the motion were Bedrick, Cohen, Ginsburg, and Tranter. Task Force member Weglein abstained.

Dr. Blumberg then moved that free-standing birthing centers not be regulated under the same rules as hospitals. The motion was seconded. Task Force members Blumberg, Cody, Cohen, Meilman, Moffit, Rosen, Stefanides, Suldán, Tranter, and Weglein voted in favor of the motion. Task Force members Bedrick, Ginsburg, Pinkner, and Pommert opposed the motion. Ms. Holland abstained.

Dr. Meilman made a motion that the Task Force recommend the consideration of a rational transport system to the Commission, which was seconded by Mr. Tranter. Following discussion, it was the consensus of the Task Force that timely transfer and transport of patients was within the purview of the Maryland Institute for Emergency Medical Services Systems (MIEMSS).

#### **4. Other Business**

- Burn Care Services

Chairman Nicolay observed that Burn Care Services would be considered by the Task Force after receipt of comment from Ms. Brown on behalf of Johns Hopkins Health System.

#### **5. Adjournment**

Chairman Nicolay announced that the next meeting would be held on Thursday, September 22, 2005 at 1:00 p.m., and upon a motion by Dr. Pinkner and seconded by Mr. Tranter, adjourned the meeting at 4:12 p.m.